No. 24-781

IN THE
Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Petitioner,

v.

MATTHEW PLATKIN, in his official capacity as ATTORNEY GENERAL OF NEW JERSEY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF *AMICI CURIAE* ANONYMOUS DONORS TO PREGNANCY RESOURCE CENTERS SUPPORTING PETITIONER

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INTEREST OF *AMICI CURIAE*

Amici curiae are 24 individuals who made charitable contributions to pregnancy resource centers, including petitioner First Choice Women's Resource Centers, Inc.[1] The Donors gave to First Choice and others because of their faith-based, pro-life missions. But because of the backlash that can result from supporting controversial organizations, the Donors gave on the condition of anonymity. That is their right. The First Amendment protects the Donors' ability to support, celebrate, and associate in private. And this Court has, time and again, shielded individuals from the government's efforts to intrude on these rights.

The New Jersey Attorney General disagrees with First Choice's mission. The harm First Choice has suffered from the Attorney General's investigative demands is self-evident and more than adequate to support federal jurisdiction over its suit. But this Court also considers an organization's donors when it assesses the existence of constitutional harm from compelled disclosure of those donors' identities. And here, the Attorney General's actions put a price tag on the Donors' freedom to speak freely and anonymously. If Donors continue to support First Choice, their identity will be unmasked, exposing them to the threat of retaliation, economic reprisal, harassment, and stigmatization. This brief offers the Donors' perspective to further illustrate the chilling effect of the Attorney General's actions, which bolsters the need for a federal forum.

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[1] Pursuant to this Court's Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity, other than counsel, has made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Donors have the right to associate—including by giving money—with organizations publicly or privately (including anonymously). *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). Compelling disclosure of a person's private association necessarily harms those interests. *Ams. for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 617–619 (2021). The New Jersey Attorney General claims that compelling disclosure of First Choice's donors does not constitute a harm at all. The Third Circuit agreed. But the chilling effect on the Donors' associational rights is indistinguishable from those this Court has recognized many times over. See First Choice Br. 30–47. Because these harms are presently cognizable, the Court should reverse the Third Circuit so that First Choice's claims can proceed in a federal forum.

ARGUMENT

I. This Court Has Recognized That Chilling Donors' Associational Rights Triggers Heightened First Amendment Scrutiny

A. The First Amendment prohibits the government from abridging the freedom of speech and to peaceably assemble. Included in "the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others." *Roberts* v. *U. S. Jaycees*, 468 U.S. 609, 622 (1984). The ability to freely associate advances "a wide variety of political, social, economic, educational, religious, and cultural ends." *Ibid.* And it is "especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." *Ibid.*

Abortion is among the most sensitive topics in modern discourse. As the Court explained in *Dobbs*, "[a]bortion presents a profound moral issue on which Americans hold

sharply conflicting views." *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 223-224 (2022). Members of this Court have often remarked upon the intense public debate over abortion. *E.g.*, *Planned Parenthood of Se. Penn.* v. *Casey*, 505 U.S. 833, 963 (1992) (Rehnquist, C.J., partially concurring and partially dissenting) (noting that the Court's abortion jurisprudence prompted "large demonstrations, including repeated marches on this Court and on Congress, both in opposition to and in support of" *Roe* v. *Wade*); *Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 785–790 (1994) (Scalia, J., partially concurring in the judgment and partially dissenting) (recounting the protesting and counter-protesting outside of an abortion clinic). When someone has strong convictions about abortion or any other hotly contested issue, it is understandable that he may wish to participate in the cultural conversation while preserving anonymity.

The First Amendment protects this "right to associate with others" while ensuring "privacy in one's associations." *Roberts*, 468 U.S. at 622 (first quote); *Patterson*, 357 U.S. at 462 (second quote). Indeed, the First Amendment's drafters personally observed the value of anonymous speech in the debates over the Constitution's ratification. See *Ams. for Prosperity*, 594 U.S. at 620–621 (Thomas, J., concurring) (tracing this right back to the Founding era); *McIntyre* v. *Ohio Elections Comm'n*, 514 U.S. 334, 361–367 (1995) (Thomas, J., concurring in the judgment) (detailing the historical evidence). The Founders understood that "[a]nonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society." *McIntyre*, 514 U.S. at 357.

Anonymous association can contribute valuably to public discourse. "Effective advocacy of both public and

private points of view, particularly controversial ones, is undeniably enhanced by group association." *Patterson*, 357 U.S. at 460; *Buckley* v. *Valeo*, 424 U.S. 1, 65 (1976) ("[G]roup association is protected because it enhances 'effective advocacy.'") (citation omitted). The "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Patterson*, 357 U.S. at 462.

Anonymity allows Americans to speak, associate, and give freely without fear of reprisal. See *Talley* v. *California*, 362 US. 60, 65 (1960). These associational rights include the right to anonymously donate money to a preferred cause, which implicates the same interests as anonymously associating with a group. After all, "'[f]inancial transactions can reveal much about a person's activities, associations, and beliefs.'" *Buckley*, 424 U.S. at 66 (quoting *Cal. Banker's Ass'n* v. *Schultz*, 416 U.S. 21, 78–79 (1974) (Powell, J., concurring)). Thus, a donor has a First Amendment right to give freely and anonymously to groups whose goals he supports.

B. History teaches, however, that anonymity's furtherance of a group's mission can also make it a target. See First Choice Br. 7–13. Destroying the anonymity of donations to a controversial cause welcomes the ire of opponents. "[W]hen information about one's donation to a group is available to the public, it is more plausible that people who are opposed to the mission of that group might make a donor suffer for having given to it." *Citizens United* v. *Schneiderman*, 882 F.3d 374, 384 (2d Cir. 2018). What is more, "the advent of the [i]nternet enables prompt disclosure of expenditures, which provide[s] political opponents with the information needed to intimidate and retaliate against their foes." *Citizens United* v. *FEC*, 558 U.S. 310, 484 (2010) (Thomas, J., partially concurring and partially dissenting) (internal quotes omitted). As a result,

the risks of retaliation "are heightened in the 21st century and seem to grow with each passing year, as 'anyone with access to a computer [can] compile a wealth of information about' anyone else, including such sensitive details as a person's home address or the school attended by his children." *Ams. for Prosperity*, 594 U.S. at 617 (quoting *John Doe No. 1* v. *Reed*, 561 U.S. 186, 208 (2010) (Alito, J., concurring)).

The textbook example comes from the Jim Crow South. Alabama sought to reveal members of the NAACP, using the pretext of the NAACP's failure to comply with procedural laws governing out-of-state corporations conducting business in Alabama. *Patterson*, 357 U.S. at 462. Louisiana tried something similar. *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293, 296 (1961). As did the Florida Legislature. *Gibson* v. *Fla. Legis. Investigation Comm.*, 372 U.S. 539, 551 (1963). And the City of Little Rock. *Bates* v. *City of Little Rock*, 361 U.S. 516, 527 (1960). Each time, the justification for disclosure was anodyne: The government was merely enforcing state and local law. But the true goal was to chill the NAACP members' associational rights. Disclosure subjected the NAACP members "to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." *Patterson*, 357 U.S. at 462. And that *fear* was the desired result—state actors knew that the "fear of exposure of [the members'] beliefs" and "the consequences of this exposure" would "induce members to withdraw from the Association and dissuade others from joining it." *Id.* at 462–463.

C. History has repeated itself in more recent times. California law forced Proposition 8 donors to disclose their full names, addresses, occupations, and employers. See *Citizens United*, 558 U.S. at 482 (Thomas, J., partially dissenting). When that information came to light, many supporters faced death threats or lost their jobs after

Proposition 8's opponents threatened large-scale boycotts. *Ibid.* One had to resign after angry mobs repeatedly protested her family-owned restaurant to publicly shame her for supporting Proposition 8. *Ibid.*

Or consider the Californians who donated to the Americans for Prosperity Foundation or the Thomas More Law Center. *Ams. for Prosperity*, 594 U.S. at 604. California insisted that charities disclose the names and addresses of donors giving more than $5,000 per year. *Id.* at 602. The Foundation's donors feared the effects of disclosure, and with good reason. For example, the Foundation's CEO testified that "a technology contractor working at the Foundation's headquarters had posted online that he was 'inside the belly of the beast' and 'could easily walk into [the CEO's] office and slit his throat.'" *Id.* at 604 (citation omitted); see *Ams. for Prosperity Found.* v. *Harris*, 182 F. Supp. 3d 1049, 1055 (C.D. Cal. 2016) (noting that this individual was found in the parking garage "taking pictures of employees' license plates"). The Law Center also received "threats, harassing calls, intimidating and obscene emails, and even pornographic letters." *Ams. for Prosperity*, 594 U.S. at 604. Needless to say, the donors did not want that same ire turned on them and testified that those fears chilled their support of the Foundation and the Law Center. *Ibid.*; see *Thomas More L. Ctr.* v. *Harris*, No. 15-CV-3048, 2016 WL 6781090, at *4 (C.D. Cal. Nov. 16, 2016) (detailing harassment and evidence of chilling effect on donors).

This Court's cases underscore the regrettable reality that compelled disclosure puts a price tag (donors' safety) on First Amendment rights (to associate freely). That risk is especially high for hotly contested political debates that the First Amendment protects most zealously. To safeguard these values, the Court has held that even "[t]he risk of a chilling effect on association is enough" to trigger exacting scrutiny "[b]ecause First Amendment freedoms

need breathing space to survive." *Ams. for Prosperity*, 594 U.S. at 618–619 (quoting *NAACP* v. *Button*, 371 U.S. 415, 433 (1963)); see *Sec'y of State of Md.* v. *Joseph H. Munson Co.*, 467 U.S. 947, 968 (1984) (compelled disclosure "creates an unnecessary risk of chilling" and thus infringes First Amendment rights). That maxim applies with full force to the case at hand.

II. The Donors Have Experienced Associational Harms That Trigger Heightened First Amendment Scrutiny And Warrant Protection In A Federal Forum

The Donors' First Amendment rights are being chilled by the New Jersey Attorney General's attempt to unmask their anonymous contributions to First Choice and other pregnancy resource centers.

A. The Attorney General is the latest state actor to threaten anonymous political association in a way that suppresses disfavored speech. In the wake of *Dobbs*, the Attorney General began to investigate pregnancy centers like First Choice, alleging that they engage in suspect activities like "[o]ffer[ing] free services (including pregnancy tests, ultrasounds, and adoption information) or supplies (including diapers and baby clothes) to individuals seeking *** reproductive health care services."[2] Cf. *Citizens United*, 558 U.S. at 483 (Thomas, J., partially concurring and partially dissenting) (anticipating the "threat of retaliation from *elected officials*" if disclosure is mandated).

Then, claiming to ensure that First Choice was complying with state consumer-protection law, cf. *Patterson*,

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[2] Consumer Alert, New Jersey Division of Consumer Affairs, https://www.njconsumeraffairs.gov/Documents/crisis-pregnancy-centers.pdf#search=%22reproductive%20health%20care%20services%22 (Dec. 1, 2022).

357 U.S. at 462, the Attorney General subpoenaed First Choice to demand the identities behind 5,000 donations. Fighting to keep the challenge to his subpoena in state court—to prevent federal-court review of its constitutionality—the Attorney General has maintained that his subpoena harms neither First Choice nor its donors. Br. in Opp. 3 (asserting that enforcing the subpoena "does not have the impacts" that First Choice "alleges").

B. The Donors can attest that the Attorney General is flatly incorrect. This Court has long considered the chilling effect on donors or members when it assesses the impact of compelled disclosures. See *Ams. for Prosperity*, 594 U.S. at 616–618 ("We are left to conclude that the Attorney General's disclosure requirement imposes a widespread burden on donors' associational rights."); *id.* at 616–617 (a risk of chilling donors' rights occurs if a donor has "reason to remain anonymous"); *Buckley*, 424 U.S. at 74 (evidence can include "evidence of past or present harassment of members" or "harassment directed against the organization itself"). And here, the Attorney General's efforts to compel disclosure of First Choice's donors are in fact deterring the Donors' protected speech.

The Donors comprise a diverse group of 24 people who support pregnancy centers, including First Choice. Collectively, the Donors have given to pregnancy centers in 12 different states. They have given as little as $100 annually and as much as $15,000 annually. They have donated to the new construction of certain pregnancy centers. And beyond money, they have contributed baby bottles, diapers, wipes, and even their own children's cribs, to support new mothers. All of them would feel personally threatened if their identities were publicly revealed.

Take Donor #1. His family donates twice a year to First Choice. He believes that revealing his identity could have dire consequences for his business relationships

because his political and religious commitments represent a minority viewpoint in his community. *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91 (1982) ("The Constitution protects against the compelled disclosure of political associations and beliefs."). If his clients knew he supported pro-life causes, Donor #1 worries that his customers would take their work elsewhere. See *Patterson*, 357 U.S. at 463 (fear of economic reprisal chilled members' speech). That is especially true because his work requires significant interaction with the New Jersey government. Given the New Jersey government's disposition towards pregnancy resource centers, Donor #1 fears reprisal from public officials who may steer work away from him as a result of his donations.

Donor #2 is a Virginian who gives a few hundred dollars a year to a pregnancy resource center in Maryland.[3] But if she knew that her identity would be publicly disclosed, it would deter her from making future contributions. And not just to pregnancy centers—disclosure would chill her desire to donate to *any* cause consistent with her beliefs. See *Talley*, 362 U.S. at 65 ("identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance"). She believes the social repercussions, including being targeted for her personal beliefs, would be too great to bear.

Donor #3 donates to First Choice through its client-facing website, as well as a pregnancy resource center in

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[3] After *Dobbs*, pregnancy centers were attacked throughout Maryland. H. Res. 1502, 117th Cong. (2022) (as introduced Dec. 1, 2022) (House Resolution providing three examples of pregnancy centers being vandalized with graffiti signed "Jane's Revenge"). In Lynchburg, Virginia, a pregnancy center was graffitied with the message "if abortion aint safe, you aint safe." *Ibid.*

his home state of California.[4] Like all First Choice Donor *amici*, he understood First Choice's mission from the content of its website. But he would be intimidated if the government and his neighbors were able to learn that he was supporting pro-life causes. See *Shelton* v. *Tucker*, 364 U.S. 479, 486 (1960) (noting the "constant and heavy" pressure teachers would face from disclosing associational ties to schools). If his identity were to be released, he would reconsider his donations to avoid potential retribution.

Donor #4 concurs. His family lives in North Carolina, and they donate to pregnancy centers in North Carolina, Virginia, and Mississippi.[5] They believe that their donations are a private matter between them and God, but they worry that publicizing that information would make them a target—for both private and public actors. See *Ams. for Prosperity*, 594 U.S. at 610 (quoting *Baird* v. *State Bar of Ariz.*, 401 U.S. 1, 6 (1971) (plurality op.)) ("[B]road and sweeping state inquiries into these protected areas *** discourage citizens from exercising rights protected by the Constitution.'").

Donors #5–6 are a husband and wife in Alabama. They give to pregnancy centers in Alabama, Georgia, Virginia,

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[4] See H. Res. 1502, supra n.3 (providing five examples of pregnancy centers in California having windows smashed with rocks, spray-painted, and threatened by a machete-wielding man).

[5] See H. Res. 1502, supra n.3 (detailing an attack on a pregnancy center in Asheville, North Carolina, where the windows were smashed and the sidewalk was spray painted with "if abortions aren't safe, then neither are you"). One Mississippi pregnancy center reported that, after *Dobbs*, it "experienced fake calls and a flood of online contact-form submissions, which [it] believes [was] intended to crash the site." Quinn, *Anti-abortion pregnancy centers see chance to grow in wake of Supreme Court's ruling*, CBS News (July 21, 2022), https://www.cbsnews.com/news/crisis-pregnancy-centers-abortion-supreme-court-ruling/.

and Oregon.[6] But they fear that disclosing their identity to state officials "with hostile views" could threaten their safety.

Other Donors concur. They deeply value associating with pro-life causes, but disclosure tactics like those used by the Attorney General would chill their giving.

C. Americans of good faith debating any side of a controversial issue should not have to weigh the risks of reprisal before privately associating with an organization that embodies their beliefs. Donors' fears expressed here mirror precisely the harms that this Court has found sufficient to establish the "chilling effect on association" that triggers First Amendment scrutiny. *Ams. for Prosperity*, 594 U.S. at 618; cf. *Buckley*, 424 U.S. at 74. The Third Circuit therefore erred in concluding that there was no harm for a federal court to redress. First Choice Br. 29–31. Indeed, under the Attorney General's theory, First Choice will *never* have access to a federal forum to vindicate its First Amendment rights. *Id.* at 19–29. Meanwhile, as the litigation takes its course in state court, the Donors' First Amendment freedoms will be squelched. This Court should ensure that a federal forum remains open to promptly redress the First Amendment injuries inflicted by compelled disclosure of associational information.

CONCLUSION

The Court should reverse the Third Circuit's judgment.

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[6] In 2022, protestors ignited and threw Molotov cocktails at the Oregon Right to Life building. Stringer, *FBI investigating abortion-related attacks in Oregon, nationwide*, Oregon Capital Chronicle (Jan. 30, 2023), https://oregoncapitalchronicle.com/2023/01/30/fbi-investigating-attacks-on-anti-abortion-centers-in-oregon-nationwide/. In addition, a pregnancy resource center was targeted "for arson in June and again [in] early July," and was spray-painted with the message "IF ABORTION AINT SAFE NEITHER RU," and "JANES RVVGG." *Ibid.*

Respectfully Submitted.

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